

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Plaintiff,

ELODIA SANCHEZ

Plaintiff-Intervenor,

v.

EVANS FRUIT CO., INC.

Defendant,

and

JUAN MARIN and ANGELITA
MARIN, a marital community,

Defendants-Intervenors.

NO. CV-10-3033-LRS

**ORDER GRANTING
MOTION FOR
CERTIFICATION**

BEFORE THE COURT is the Plaintiffs' Motion For Certification Pursuant To 28 U.S.C. §1292(b) and Motion To Stay The Discovery Order Pending Interlocutory Appeal (ECF No. 294). Telephonic oral argument was heard on August 23, 2011.

Based on *Rivera v. Nibco*, 364 F.3d 1057 (9th Cir. 2004), the court

**ORDER GRANTING
MOTION FOR CERTIFICATION - 1**

1 concludes there is a controlling question of law as to which there is a substantial
2 ground for difference of opinion, that being as follows: In a Title VII case as to
3 which immigration status is potentially relevant to the issue of damages, where the
4 court bifurcates the issues of liability and damages, is it also compelled to
5 bifurcate discovery regarding liability and damages such that discovery regarding
6 immigration status is stayed pending resolution of liability? By clarifying
7 Plaintiffs' discovery obligations in the liability phase, the undersigned finds that
8 resolution of this controlling question of law may materially advance the ultimate
9 termination of the litigation¹.

10 Plaintiffs' Motion For Certification Pursuant To 28 U.S.C. §1292(b) and
11 Motion To Stay The Discovery Order Pending Interlocutory Appeal (ECF No.
12 294) is **GRANTED**. Application to the Ninth Circuit for this interlocutory appeal
13 shall be made within ten (10) days of entry of this order. All discovery regarding
14 immigration status in the captioned matter is **STAYED** pending the ten (10) day
15 period and, if the application is granted by the Ninth Circuit, during the pendency
16 of the interlocutory appeal.

17 "Discovery regarding immigration status" does **not** include: 1) information
18 sought pursuant to Interrogatory No. 1 concerning addresses at which Plaintiff-
19 Intervenor has resided since January 1, 2000; 2) information sought pursuant to
20 Interrogatory No. 2 and Request For Production No. 7 concerning Plaintiff-
21 Intervenor's home phone and cell phone numbers; 3) information sought pursuant
22

23 ¹The declarations of Blanca E. Rodriguez, ECF. No. 327 and Carmen Flores,
24 ECF No. 326 were not considered for purposes of deciding the motions at issue
25 herein.
26

27 **ORDER GRANTING**
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1 to Interrogatory No. 3 concerning identification of Plaintiff-Intervenor's
2 employers; 4) information sought pursuant to Interrogatory No. 6 and Request For
3 Production No. 4 concerning claims made by Plaintiff-Intervenor; and 5)
4 information sought pursuant to Interrogatory No. 12 concerning identification of
5 health-care professionals who have treated or examined Plaintiff-Intervenor.
6 These particular discovery requests, if not already answered, should be answered
7 forthwith.

8 The only specific discovery currently at issue includes a limited number of
9 interrogatories and requests for production. (ECF No. 250-1). Obviously, the
10 court cannot anticipate all of the questions that may be asked at any forthcoming
11 depositions and disputes may arise as to whether a particular question directly or
12 indirectly seeks information regarding immigration status. The court notes that in
13 *Rivera*, the protective order upheld by the Ninth Circuit allowed the defendant to
14 engage in discovery concerning the plaintiffs' places of marriage, educational
15 background, current and past employment, damages, date of birth, and criminal
16 convictions, but limited disclosure of that information to the parties and their
17 attorneys. 364 F.3d at 1062. And while the protective order barred discovery
18 regarding immigration status, it did not preclude the defendant from conducting its
19 own independent investigation. *Id.*

20 **IT IS SO ORDERED.** The District Court Executive is directed to enter
21 this order and to provide copies to counsel of record.

22 **DATED** this 25th day of August, 2011.

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24 *s/Lonny R. Suko*

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LONNY R. SUKO
United States District Court Judge

26 **ORDER GRANTING**
27 **MOTION FOR CERTIFICATION - 3**
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